IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 739 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements ? NO

2. To be referred to the Reporter or not ? NO

3. Whether Their Lordships wish to see the fair copy of the judgement ? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder ? NO

5. Whether it is to be circulated to the Civil Judge ? NO

GYANSHYAMBHAI D DABHI

Versus

GEB & 1

Appearance:

MR RD RAVAL for Petitioner

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

24/04/1996

ORAL JUDGEMENT

Ghanshyambhai D Dabhi, original petitioner in Special Civil Application No. 1181 of 1994, has preferred the present Letters Patent Appeal against the rejection of his petition by the learned Single Judge of this Court on 24th March, 1994.

Petitioner Ghanshyambhai is son of Dayalbhai Dabhi. The said Dayalbhai Dabhi died on 7th December, 1992 when he was working as a Lineman with respondent No. 1 and when he was in his harness. Thereafter, the appellant had applied jointly with his mother for appellant's appointment on compassionate ground. The respondent was initially pleased to issue appointment order subject to approval on 19th October, 1993 but before he could join the services, the said appointment order was withdrawn on the ground that appellant had concealed the fact that his elder brother was already in service with the respondent and he had not disclosed this fact.

The appellant has preferred a writ petition. It is his contention that cancellation of the said approval to appointment without giving him an opportunity of being heard was illegal. It was further contended by him that his elder brother was living separately and respondent had also given appointment in other cases in which son of the deceased employee was also in employment. The claim of Appellant was represented by the respondent No. 1 before the learned Single Judge. After hearing both the sides, the learned Single Judge came to the conclusion that there was no relationship of employer and employee, between the appellant and the respondent No. 1. He also found that the appellant had failed to show that his employed brother was living separately from the family. In view of the said findings, the learned Single Judge came to the conclusion that the petition was not tenable. As regards the contention of the appellant that the respondent No. 1 had given employment to other persons in contravention of GSO 295, the learned Single Judge has observed that if those appointments were illegal and in contravention of the said GSO, necessary action should be taken by the respondents.

The learned counsel for the appellant Mr. Raval vehemently urged that the respondent No. 1 ought to have given him opportunity of being heard before taking action in question. Admittedly, there is no approval to appointment and appellant had not joined his duty, therefore, no relationship of employee and employee is created between the appellant and respondent No. 1. Mere issuance of appointment order did not create any legal right in favour of the appellant, therefore, for cancellation of the said appointment order, it was not necessary of hearing the appellant before passing the said order. The appellant has come before the Court with a case that his employed brother was living separately

but in view of the facts stated by the respondent in the affidavit in para 3.3, and the facts stated by the appellant himself in his own affidavit, that his employed brother was taking interest in his employment, was present in his house at the time of death of his father, the conclusion to which the learned Single Judge had arrived at viz., that the member of family of deceased employee was in employment, could not be said to be illegal or perverse so as to interfere with the same by us.

As regards the contention of the learned counsel for the appellant that there are appointments in contravention of GSO 305, the learned Single Judge has already observed that the respondent should take legal action against them. Merely because earlier some illegal orders have been passed by the respondents, it couldn't be said that the appellant must also be given appointment contrary to the provisions of GSO 295.

The discussion of the learned Single Judge as regards as to whether the brother of the Appellant was member of the family or not, was not at all necessary for deciding the petition in question. We, therefore, do not wish to confirm the said finding of the learned Single Judge. We only say that in view of material available on record, it is not possible for us to come to the conclusion that the withdrawal of the approval by the respondent No. 1 was illegal or invalid. However, it is submitted before us by the learned counsel for the appellant that the appellant wish to make a fresh representation for his appointment on compassionate grounds. If he makes such a representation, the respondents shall consider the same on merits afresh, without being influenced by the fact that the writ petition and LPA have been dismissed by this Court. The representation of appellant should be decided as expeditiously as possible. With these observations, we dismiss the appeal with no order as to costs.

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